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Congress Fails to Enact Any Major Changes to Forfeiture Law

Money Laundering Bill Among the Casualties of Year-end Gridlock

by Stefan D. Cassella, Assistant Chief, AFMLS, Criminal Division

The 105th Congress has adjourned without enacting any major changes to the federal forfeiture laws. In particular, Congress failed to take any action on the set of civil asset forfeiture "reforms" sponsored by Rep. Henry Hyde (R-Ill.). Thanks largely to the concerted and vocal efforts of virtually all of the state and local law enforcement agencies, and the support of key Members of Congress such as Rep. Gerald Solomon (R-N.Y.), Chairman of the House Rules Committee, the Hyde bill never emerged from the House Judiciary Committee.

Blocking civil forfeiture reforms, however, had consequences. In a series of letters to other committee chairmen, Rep. Hyde requested that all changes to the civil and criminal forfeiture laws that were supported by law enforcement, as well as any related money laundering provisions, be blocked until his civil asset forfeiture reforms are enacted. For example, on October 6, 1998, Rep. Hyde wrote to Sen. Orrin Hatch (R-Utah), Chairman of the Senate Judiciary Committee, stating his unequivocal opposition to every provision in a bipartisan anti-money laundering bill except for the title of the bill, the table of contents, and a handful of minor and technical amendments. (*See* Hyde's letter at 3.) Rep. Hyde sent a similar letter to Rep. Jim Leach, Chairman of the House Banking Committee, blocking a provision in another money laundering bill that would have extended the limitations period for the forfeiture of fungible property in bank accounts under 18 U.S.C. § 984 from one- to two-years.

Among the casualties of Rep. Hyde's opposition were a number of noncontroversial

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provisions that Rep. Hyde himself has supported in the past. For example, in the Senate money laundering bill that Sen. Hatch and his Democratic counterpart Sen. Patrick Leahy (D-Vt.) were supporting were the following provisions that had appeared in 1997 in Rep. Hyde's own bill, H.R. 1965:

- a 60-day freeze on U.S. assets of persons arrested abroad;
- the admission of foreign business records in federal civil cases; and
- the authority for district court to order defendants in criminal cases to repatriate assets subject to forfeiture.

Also stripped from the money laundering bill were provisions that did not relate to forfeiture at all. For example, Rep. Hyde opposed:

- a long-arm statute giving the district courts jurisdiction to impose financial sanctions on foreign banks that launder money in the United States under section1956(b);
- the addition of foreign offenses—including terrorism, public corruption, and fraud—to the list of money laundering predicates;
- the authority to charge money laundering as a course-of-conduct offense so that each financial transaction does not have to constitute a separate count;
- a venue provision for money laundering to address the Supreme Court's decision in *Cabrales*; and
- the clarification of section 1957 to eliminate the "dirty-money-last-out" rule in *United States v. Rutgard* that makes it difficult to use that statute in the Ninth Circuit.

Finally, Rep. Hyde blocked all significant civil forfeiture improvements, as well as a panoply of noncontroversial minor and technical amendments. Most significant among these were:

- the codification of the fugitive disentitlement doctrine;
- the authority for the Attorney General to restore forfeited property in civil cases to victims;
- the correction of the criminal forfeiture provision for alien smuggling, 18 U.S.C. § 982(a)(7), to cross-reference the alien smuggling statute; and
- the incorporation of criminal forfeiture procedures necessary to make it possible to prosecute cases under the forfeiture provision for food stamp fraud.

As described in this issue of *Asset Forfeiture News* at 11, Congress did pass a few forfeiture provisions before it adjourned. Most significant of these were several new criminal forfeiture

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provisions, improvements to both civil and criminal forfeiture authority in child pornography cases, and at long last, an amendment to 18 U.S.C. § 982(b)(1) incorporating the same criminal forfeiture procedures for *all* criminal forfeitures authorized by section 982(a). Thus, after a gap of more than six years, we finally have criminal forfeiture procedures for auto-theft cases under section 982(a)(5), as well as the bank fraud provisions of section 982(a)(3) and (4).

However, Rep. Hyde's opposition to virtually all other significant money laundering and asset forfeiture improvements—including the most noncontroversial provisions that he himself has supported in the past—signals that there is no chance for the enactment of these provisions for the foreseeable future. Regardless of Rep. Hyde's position, law enforcement remains strongly opposed to the most objectionable provisions in his proposal.

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

October 6, 1998

The Honorable Orrin Hatch
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Orrin:

I understand that tomorrow the Senate Judiciary Committee will be marking up the S. 2011, the "Money Laundering Enforcement and Combatting Drugs in Prison Act of 1998." My analysis of the bill and the proposed substitute amendment indicate that the measures contain numerous substantive changes to federal forfeiture laws and to money laundering laws that directly implicate forfeiture laws. As you know, I have a long-standing interest in curtailing abusive application of the federal civil forfeiture laws and I plan to bring reform legislation to the House floor in 1999. In this context, I must express my opposition to a number of the provision[s] contained in S. 2011 and the proposed substitute.

I am troubled by Congress making any substitute changes to federal forfeiture laws until fundamental reform is accomplished. Putting my generalized concerns aside, I have serious concerns with a number of the provisions in S. 2011 and the substitute that are likely to send the federal forfeiture regime further in the wrong direction. Specifically, I am strongly opposed to sections 102, 103, 104, 105, 107, 109, 110, 111, 112, 113 and 114 of S. 2011 as introduced and sections 3, 4, 5, 6, 8, 10, 11, 12, 13, 15, 16, 17, 21, 22, 23, and 25 of the proposed substitute. At the very least, these provisions should be the subject of full hearing and committee deliberation in both the House and the Senate. As this would be impossible in the waning days of the Congress, I would have no choice but to oppose legislation that contains any of these provisions.

I would respectfully request that the Senate Judiciary Committee not approve the foregoing provisions. I certainly look forward to working with you on forfeiture reform in the 106th Congress.

Sincerely,
/s/
Henry J. Hyde
Chairman

cc: The Honorable Trent Lott
The Honorable Patrick Leahy

Cleland Introduces Bill to Aid Seizures of Drug Money in Airports

Legislation would create rebuttable presumption based on dog sniff and other factors

By Stefan D. Cassella, Assistant Chief, AFMLS, Criminal Division

Congress may not have accomplished much this year in the areas of forfeiture and money laundering (*see* story at 1), but Sen. Max Cleland (D-Ga.) did signal a positive step for the future when he introduced a bill to aid law enforcement in confiscating currency taken from drug couriers who are intercepted in airports and on highways.

The Drug Currency Forfeitures Act, S. 2449, 105th Cong., 2d Sess. (1998), would create a rebuttable presumption that $10,000 or more in currency constitutes drug proceeds if certain well-defined circumstances are found to exist. Those circumstances are the ones that recur repeatedly in airport cases: a large quantity of "street money" packaged in an unusual fashion; a traveler fitting the courier profile who tells a false story to the officer who stops him; and a positive alert from a drug dog. Any claimant who challenges the forfeiture would have the opportunity to rebut the presumption by offering evidence that the money came from a legitimate source, but the claimant could no longer remain silent and hope to prevail on the ground that the Government was unable to establish a reasonable basis to believe that the money was drug proceeds.

In his statement on the Senate floor when he introduced the bill, Sen. Cleland listed recent cases where the courts have dismissed forfeiture actions against drug money for lack of probable cause and discussed how his legislation would address those cases. (*See* Sen. Cleland's statement below.) Most important, the statement describes the research conducted by Dr. Kenneth Furton and his colleagues that validates the dog sniff as a reliable indicator that seized currency has been in recent contact with a large quantity of cocaine. (*See* "The Significance of a Drug Dog's Alert in a Forfeiture Case," *Asset Forfeiture News,* January/February 1998, at 10-13.) The citation to Sen. Cleland's statement is 144 Cong. Rec. S9979 (daily ed. Sept. 8, 1998), at 1998 WL 567464. A follow-up statement in which Sen. Cleland discussed his proposal in more detail and explained how it would work in the context of current asset forfeiture practice may be found at 144 Cong. Rec. S12223-03 (daily ed. Oct. 9, 1998), 1998 WL 701466.

Congress took no action on Sen. Cleland's bill this year, but the Senator has stated that he will press for positive action in 1999.

Excerpt from Statement of Sen. Max Cleland on the Drug Currency Forfeiture Act

Mr. President, there have been a series of recent cases in which courts have ruled against one of law enforcement's most effective anti-drug tools—asset forfeiture. Just consider:

Law enforcement agents at an airport found almost $50,000 wrapped inside a pair of jeans. A drug dog responded positively to the presence of narcotics on the money, and the traveler, when confronted by the agents, produced a fake driver's license and offered other false evidence. *United States v. $49,576.00 in U.S. Currency*, 116 F.3d 425 (9th Cir. 1997).

In another instance, narcotics agents found $30,000 wrapped in bundles and stashed under the seat of a car. Despite the courier's demonstrably false explanation of the source of the money, the court nevertheless found insufficient evidence to establish probable cause for forfeiture. *United States v. U.S. Currency, $30,060.00*, 39 F.3d 1039 (9th Cir. 1994).

These are but two in a series of cases in which the courts found

circumstantial evidence sufficient to establish that the money was derived from some form of criminal activity, but insufficient to establish that the illegal activity involved drug trafficking. The courts therefore ruled that the money seized was not subject to forfeiture, and the proceeds were returned to the trafficker. *See also United States v. $13,570.00 in U.S. Currency*, 1997 WL 722947 (E.D. La. 1997) (seizure of cash at airport lacked probable cause despite dog sniff, evasive answers, fake identification, courier profile, and prior drug arrest); *United States v. $14,876.00 in U.S. Currency*, 1997 WL 722942 (E.D. La. 1997) (same); *United States v. $40,000 in U.S. Currency*, 999 F. Supp. 234 (D.P.R. 1998) (dog sniff, drug courier profile, quantity of currency, and evasive answers are not sufficient to establish probable cause where the Government fails to establish any connection between claimant and any drug trafficker).

Mr. President, these court decisions are coming at a time when drug sales in this country are generating $60 billion in illegal proceeds every year. Most of this drug money finds its way to drug kingpins in Mexico and Colombia. And the drugs find their way to Americans of all ages and walks of life. The consequences are devastating. Substance abuse is now the single largest preventable cause of death in this country, with illegal drugs and alcohol killing 120,000 Americans each year.

* * *

The transportation and transmission (by electronic means) of drug proceeds are enormous problems for law enforcement, but they also present law enforcement with an enormous opportunity. Because drug proceeds in the form of cash occupy much more space than the drugs themselves—often filling suitcases, vehicles, and even airplanes—the movement of the cash is often the most vulnerable part of the drug operation. Indeed, law enforcement agents are frequently successful in intercepting such cash shipments by stopping couriers at airports, opening containers at Customs checkpoints, and encountering cars stuffed with cash during routine traffic stops.

However, the ability of law enforcement to confiscate the money—and thus break the drug trafficking cycle—hinges on the Government's ability to establish that the money is, in fact, drug proceeds, and not the proceeds of some other form of unlawful activity. Therefore, today the distinguished chairman of the Senate Caucus on International Narcotics Control, Senator Grassley, and I are introducing the Drug Currency Forfeitures Act. Our bill enhances the ability of law enforcement agents to interdict and confiscate the huge quantities of drug money that are being moved through our airports, up and down our major highways, through our ports, and in and out of financial institutions here and abroad—while at the same time it upholds Fourth Amendment constitutional protections against illegal searches and seizures. Specifically, our bill would create a "rebuttable presumption" that money is subject to forfeiture as drug proceeds in cases involving drug couriers carrying large amounts of cash through drug transit areas, and in cases involving international money laundering. The presumption would apply if any of the following factors is established by the Government.

Factor one: There is more than $10,000 in currency being transported in one of the transit places commonly used by drug traffickers—for example, an airport, an interstate highway, or port of entry—and any of the following circumstances commonly associated with the transportation of drug proceeds exists: the money is packaged in a highly unusual manner; or the courier makes a false statement to a law enforcement officer or inspector; or the money is found in close proximity to drugs; or a properly trained dog gives a positive alert.

I note here that there has been much criticism of the use of drug dogs to interdict drug money, on the ground that so much currency now in circulation in the U.S. is tainted with drug residue that the drug dog's positive alert is meaningless. Let me say, however, that recent scientific research has refuted this notion and indeed supports the proposition that a drug dog's alert to currency is highly

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relevant in a forfeiture case. A study by Dr. Kenneth Furton, director of the Criminalistics Program in the Chemistry Department at Florida International University, has established that a properly trained drug dog does not alert to the cocaine residue on currency, but alerts instead to methyl benzoate—a highly volatile chemical by-product of the cocaine manufacturing process that remains on the currency only for a short period of time. Thus, even if it is true that a high percentage of our currency is contaminated with cocaine residue, the drug dogs are alerting only to money that has recently, or just before packaging, been in close proximity to a significant amount of cocaine. *See* K.G. Furton, Y.L. Hsu, N. Alvarez, and P. Lagos, "Novel Sample Preparation Methods and Field Testing Procedures Used to Determine the Chemical Basis of Cocaine Detection by Canines," *Forensic Evidence and Crime Science Investigation*, Proc. SPIE 2941, 56-62 (1997). I am attaching to my remarks an article describing Dr. Furton's work.

Factor two: The property subject to forfeiture was acquired during a period of time when the person who acquired it was engaged in a drug trafficking offense, and there is no other likely source for the money. I note that this presumption already exists in criminal forfeiture cases. *See* 21 U.S.C. § 853(d).

Factor three: The property was involved in a transaction that occurred, in part, in a bank secrecy jurisdiction or was conducted by, to, or through a shell corporation. These two factors appear repeatedly in cases involving international money laundering and therefore are highly indicative of illegal money laundering activity. However, to ensure that the presumption is focused narrowly on the problem this bill is designed to address, it would apply only where the money was being moved in or out of one of the countries the President has listed as a "major drug-transit country," a "major illicit drug producing country," or a "major money laundering country," all of which are defined terms in the Foreign Assistance Act.

Factor four: Any person involved in the transaction has been convicted of a drug trafficking or money laundering offense, or is a fugitive from prosecution for such an offense. This factor reflects the obvious fact that the movement of money by a convicted drug trafficker, money launderer, or fugitive is highly likely to involve drug proceeds.

The existence of any one of these four factors would be sufficient—by itself, or in some cases, in combination with the facts and circumstances which led to the seizure of the money—to establish probable cause to believe that the money represents drug proceeds, and if left unrebutted, would be sufficient to establish that the money is subject to forfeiture under the Controlled Substances Act, 21 U.S.C. § 881(a)(6), or the Money Laundering Control Act, 18 U.S.C. § 981(a)(1), by a preponderance of the evidence. The owner of the money, of course, would be free to rebut the presumption by submitting admissible evidence that the money was derived from a legitimate source, and the Government would have to respond either by impeaching the reliability of such evidence, or by offering admissible evidence of its own to support the forfeiture of the money. *See United States v. $129,727.000 U.S. Currency*, 129 F.3d 486 (9th Cir. 1997). In this way, legitimate owners of untainted money will be protected. However, drug traffickers and money launderers will no longer be able to rely on the ambiguities inherent in the movement of cash and electronic funds—as well as the ambiguities inherent in the standard of proof in civil forfeiture law—to win the release of their ill-gotten gains without having to come forward

with any evidence whatsoever.

On June 22, the Supreme Court handed down a highly controversial decision which is certain to have far-reaching ramifications on U.S. drug interdiction policy. That sharply divided ruling involved the case of Hosep Bajakajian, who had attempted to take $357,000 in undeclared cash to Syria, and who had lied about the amount of money he had with him when questioned by a Customs inspector. By ruling that the Federal Government cannot seize the money of a person trying to carry funds out of the country when that individual fails to declare it, unless the Government can show it is tainted money, the High Court's decision may very well reinforce the recent lower court decisions against forfeiture—a critically important weapon in our drug interdiction arsenal. Our bill would address these adverse court decisions by providing needed statutory guidance on the important and contentious issue of property subject to seizure.

Our bill has been endorsed by the Fraternal Order of Police, the International Association of Chiefs of Police, the International Brotherhood of Police Officers, and the Federal Law Enforcement Officers Association. I hope that my colleagues will support this bill.

Indian Gambling Forfeiture Actions Filed in California

By AUSAs Clare K. Nuechterlein and Edmund F. Brennan, U.S. Attorney's Office, Eastern District of California

On May 14, 1998, as part of the coordinated litigation effort among the four California federal judicial districts, the United States filed civil *in rem* forfeiture actions against the electronic gambling devices in operation at seven of the 15 Indian gambling casinos in the Eastern District of California. A total of approximately 14,000 unlawful electronic gambling machines are in operation in the 40 Indian gaming casinos statewide. There are currently 104 Indian tribes in California.

The civil *in rem* forfeiture actions were pled pursuant to 15 U.S.C. § 1171 *et seq.* (the 1951 "Johnson Act"), which prohibits the possession and use of "gambling devices" in a variety of circumstances and places, including Indian lands. The statute defines a "gambling device" as "any so-called 'slot machine' or any other machine or mechanical device an essential part of which is a drum or reel with insignia thereon, and which when operated may deliver, as the result of the application of an element of chance, any money or property. . . ."

Background

The recent history of the expansion and regulation of Indian casino gambling dates from 1987, when the Supreme Court in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), reaffirmed that only the Federal Government can regulate gambling in Indian country. In response, Congress enacted the Indian Gambling Regulatory Act (IGRA), 25 U.S.C. § 2701 *et seq.*, to establish a procedure by which states could have a strong voice in regulating Indian tribes' more sophisticated gambling activities.

IGRA exempted Indian gaming from the Johnson Act only if the particular gaming activity was conducted under a compact that was in effect.

IGRA allows Indian tribes to operate the more sophisticated gambling activities, called "Class III" gaming, only if the particular game is legal in the state and the tribe and state negotiate a "compact" that permits such a game. 25 U.S.C. § 2710(d)(1). IGRA also provides that a tribe can bring suit in federal court to compel the completion of a compact if the state is negotiating in bad faith.

IGRA did not purport to preempt the Johnson Act; rather, IGRA exempted Indian gaming

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Indian Gambling Forfeiture Actions Filed in California

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from the Johnson Act only if the particular gaming activity was conducted under a compact that was in effect. Similarly, another section of IGRA makes it a federal crime to violate state gambling law in Indian country unless authorized by a compact that is in effect. The Government contends that, if there is no compact in effect, for whatever reason, the Johnson Act governs.

The events that culminated in the current civil *in rem* forfeiture actions began in 1991, when 15 statewide tribes commenced joint IGRA compact negotiations with the State of California. A dispute arose as to what types of games could be lawfully included in a compact. The state asserted that slot machines could not be included in a compact since they are prohibited under California Penal Code § 330b(2), while the tribes asserted that the state was obligated under IGRA to allow such games in a compact.

The state in 1992 consented to be sued by a declaratory relief action in order to resolve this impasse, and the district court entered summary judgment in favor of the tribes in July 1993. *See Rumsey Indian Rancheria of Wintun Indians v. Wilson*, No. CIV-S-92-812-GEB, 1993 WL 360652 (E.D. Cal. July 20, 1993) (unpublished). While the state appealed *Rumsey*, the joint IGRA negotiations continued and ended six months later. In February 1994, the state expressed its concern, in a letter to several of the tribes, that even as they participated in the negotiations for a compact, they were expanding their Class III gaming operation without a compact in violation of IGRA and the Johnson Act. In

California Indian tribes seeking to preserve and expand their casino operations have qualified a ballot initiative on the November ballot, Proposition 5, which purports to allow Indian casinos to operate slot machines and build more gambling casinos.

November 1994, the Ninth Circuit reversed the district court in *Rumsey* and held that the tribes in California may only conduct those specific games that are conducted elsewhere in California.

The court then remanded *Rumsey* for further consideration of the limited question of whether California permits the operation of slot machines, in the form of the state lottery or otherwise, and the opinion was amended in 1995 and 1996. *Rumsey*, 41 F.3d 1421 (9th Cir. 1994), *superseded on rehearing*, 64 F.3d 1250 (9th Cir. 1995), *amended on further denial of rehearing,* 99 F.3d 321 (9th Cir. 1996). In the meantime, the tribes' unlawful Class III gaming continued to grow.

Following the final *Rumsey* opinion, and with the expansion of unlawful gaming by the tribes, the four U.S. Attorneys (USAs) in California insisted that the tribes bring their unlawful gaming to some form of orderly cessation. In February 1997, the tribes' request that no enforcement action be initiated was granted, so that compact negotiations between the state and the Pala Band Tribe could proceed to an expected model compact for the other gaming tribes. The tribes' request was granted *only on the expressed condition* that the tribes agree in writing that their uncompacted gaming would end by March 31, 1997. After the USAs granted several deadline extensions to accommodate the continuing Pala Band compact negotiations with the state, the Pala Band and the state executed the model compact on March 6, 1998.

The tribes were thereafter given until May 13, 1998, to either elect one of two options or face federal enforcement actions.

Option A allowed a tribe to elect immediate negotiations with the

state on a form of compact other than the Pala Band model, but only if it ceased illegal gaming. The state in turn agreed not to assert its Eleventh Amendment sovereign immunity defense so that the tribes could sue the state under IGRA. *See Seminole Tribe of Florida v. Florida et al.*, 517 U.S. 44 (1996) (holding that tribes could not sue a state under IGRA to compel good faith negotiations unless the state elected not to invoke its Eleventh Amendment defense).

Option B alternatively allowed a tribe to elect within 60 days to adopt the Pala model compact, and within 60 days of that election to enter into such a compact. Option B allowed the tribes almost a year to continue their current gaming pending the availability of the gaming devices approved under the Pala compact, so as to allow an orderly transition to lawful gaming. Eight of the 15 gaming tribes in the eastern district elected A or B, while the remaining seven continue to engage in gambling activities in violation of the Johnson Act.

Forfeiture Litigation

On May 14, 1998, the U.S. Attorney's Offices in the four federal judicial districts in California filed similar verified civil *in rem* forfeiture complaints against a total of approximately 14,000 illegal gambling machines. Each of the complaints for forfeiture *in rem* was supported by an affidavit of a deputy U.S. marshal and/or an FBI special agent who had recently visited all California Indian gaming casinos to verify the type and numbers of unlawful machines. In each of these cases, the United States obtained an *in rem* arrest warrant for the defendant property, and in many of these cases, the Government, tribes, and vendors stipulated to service of process by mail. The stipulation was proposed to address the Government's concerns with preventing a potential confrontation in this emotionally charged action, particularly in light of some tribal attorneys' suggestions that seizing machines might provoke violence. None of the machines were physically seized, removed, disabled, or transported from the Indian casinos, and the unlawful Class III machines remain operational.

In the eastern district, the Government filed an application, pursuant to Supplemental Rule E(4)(d), for an order for seizure (and for directions as to the means for seizure) of the defendant electronic gambling machines that are still being used in violation of the Johnson Act. Following a flood of opposing briefs and related filings, the Government's application for the seizure order, as well as related motions, was heard on July 22, 1998. Following the hearing, the district court stayed the Government's seven gaming forfeiture actions pending the tribes' IGRA "bad faith" suits against the state. The USA has recommended an appeal of the stay order.

Ballot Initiative

Meanwhile in the state political arena, California Indian tribes seeking to preserve and expand their casino operations have qualified a ballot initiative on the November ballot, Proposition 5, which purports to allow Indian casinos to operate slot machines and build more gambling casinos. As of October 5, tribes supporting Proposition 5 have raised almost $43 million, while those opposing the measure have raised $15.5 million. The *Sacramento Bee* reported on October 23, 1998, that "the rival gambling interests . . . [have spent] a combined $86 million thus far, and the 'breath-taking' total could top $100 million by election day [November 3, 1998]. . . . The measure could wind up costing almost twice as much as any proposition in state or national history."

Proposition 5 does not purport to amend the provision of the California Constitution prohibiting Las Vegas/New Jersey casino-style gaming. If the proposition passes, it is expected to be the subject of lengthy litigation in the state court system.

For an e-mail copy of this district's pleadings, supporting documents, or briefs, please contact AUSA Clare Nuechterlein at ACAE01(clnuecht).

Letters to the Editor . . .

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FBI's Approach to Better Serve Law Enforcement

By Richard Marquise, Section Chief, Operational Support Section, Criminal Investigative Division, Federal Bureau of Investigation

In 1983, the Federal Bureau of Investigation (FBI) was given concurrent jurisdiction with the Drug Enforcement Administration for conducting federal drug investigations. As a result, the ability to seize and forfeit assets was conferred upon the FBI at the same time. Because the nature of seized assets fell into a category of property, the FBI designated the Financial Branch of the Administrative Services Division as the component of the FBI responsible for overseeing this program. The FBI also created a Legal Forfeiture Unit in the now Office of General Counsel to provide legal oversight and guidance to FBI field offices in the complex area of asset forfeiture.

The passage of additional federal statutes eventually allowed the FBI the ability to seize assets in other investigative programs. These included the violent crime, white-collar crime, and organized crime fields. Ultimately, for a variety of reasons, the significance and the dollar amount of assets seized and forfeited began to decline. These included a number of court decisions, better abilities of subjects to hide assets, and frankly, even to include the significance placed on the seizure of assets by the FBI during the course of any criminal investigation.

During the 1980s and early 1990s, the FBI provided training to FBI personnel concerning the legal aspects of asset forfeiture, as well as the administrative requirements pertaining to the handling and disposition of seized assets. The Criminal Division, which was responsible for seizing assets, only participated to a limited extent in this training.

In early 1996, the Attorney General directed all agencies of the Department of Justice to make the seizure and forfeiture of assets a priority. She mandated that asset forfeiture be utilized to disrupt and dismantle criminal enterprises and organizations. Moreover, she requested that: (1) investigative agencies identify the forfeiture potential in every investigation; (2) investigative agents are trained in financial investigations; and (3) highly-qualified personnel must staff forfeiture units in each agency.

In an effort to improve performance with regard to the Asset Forfeiture Program, the FBI embarked on a serious effort to effect revitalization. The FBI recognized that both the administrative and legal assets of forfeiture were important. However, to truly impact the crime problem, the ill-gotten gains of criminals and criminal enterprises should be targeted in a strategic manner and then seized. In order to do that, the FBI wanted to place a more operational focus on this program and, in July 1997, the Criminal Investigative Division (CID) was designated the program manager of the Asset Forfeiture Program. The FBI has already begun a significant effort to train our field agents in the operational use of asset forfeiture. During fiscal years 1997 and 1998, over 3,500 field agents, managers, and select professional support personnel have been given operational "how to" training in asset forfeiture. While both the legal and administrative aspects of forfeiture are still stressed to ensure that we carry out our responsibilities in a legal and technically correct manner, it is the operational agents who will make the biggest impact in the Asset Forfeiture Program, and therefore, they should have the best training in what is necessary to seize and forfeit assets.

There was also recognition that, in order for this program to be successful, there must be a top-down approach to the reinvigoration of asset forfeiture. Various communications were directed to FBI special agents-in-charge, and each office was requested during 1997 to designate an assistant

special agent-in-charge (ASAC) as the overall program manager for the Asset Forfeiture Program. Each ASAC was provided a two-day overview of the operational aspects of the FBI Asset Forfeiture Program to allow them an understanding of forfeiture so they could better carry out their responsibilities. Additional training has been provided to FBI field supervisors, which compliments that provided to field agents. Each new agent receives an introduction to the concept of forfeiture at the FBI Academy in Quantico. Every field office was required to complete a field office action plan which described how each would strategically use the asset forfeiture tool as part of every investigative program to dismantle and disrupt the significant criminal elements in their territory.

In addition to naming the CID as the overall program manager for the FBI Asset Forfeiture Program, in early 1998 the Asset Forfeiture Unit (AFU) of CID began operation and, in conjunction with both the Finance Division and the Office of General Counsel, provides leadership and direction to this most important program. The AFU assists field offices in ensuring that their forfeiture plans are current and appropriate and that agents and supervisors are utilizing forfeiture in a strategic manner to remove the benefit of criminal activities.

The FBI believes that the approach it is taking will better serve law enforcement as we move into the next millennium. The training, guidance, and direction being provided by the FBI, through the AFU, will better allow our field components to understand their responsibilities with regard to the Asset Forfeiture Program. The steps taken to train the ASACs of each of the FBI's 56 field offices will pay dividends as these are the future special agents-in-charge and assistant directors who will be leading the FBI in the years ahead.

The message that the FBI believes it has conveyed to its own leadership and agents is simple. Asset forfeiture is not a secondary consideration. It is not optional, but rather is an essential part of any successful investigation and prosecution. We also hope that criminals get the message: crime will not pay in the 21st century.

Operation Riverside Meeting Held

By Supervisory Special Agent Bill Vanderland, Asset Forfeiture Unit, Criminal Investigative Division, Federal Bureau of Investigation

Operation Riverside, Southwest Border Forfeiture Initiative, is underway in the Rio Grande Valley of southern Texas. Operation Riverside began in October 1997, when several law enforcement agencies recognized that traditional drug investigative techniques were not dismantling the economic infrastructure that supported the Mexican criminal organizations which were smuggling drugs and aliens through the Rio Grande Valley of southern Texas. A review of the intelligence files of several law enforcement agencies indicated that many people who never handled drugs or smuggled aliens were profiting from those criminal activities by supplying the criminals with the instruments the criminals needed to carry on their schemes. It was determined that, in the Rio Grande Valley of Texas, certain financial institutions are more than happy to handle garbage bags full of cash; certain trucking companies have had drug loads seized from their trucks repeatedly yet refuse to take any security precautions; certain car dealers provide vehicles to allow the transportation of drugs; and certain property owners allow their properties to be used to cross drug loads or to store drug loads. Depriving the criminal organizations of these services will hinder their operations in ways that the mere seizure of drugs and the arrest of low-level mules could never achieve.

The goal of Operation Riverside is to use the civil forfeiture statutes to deprive the organizations of these resources. It is hoped that, if all of the agencies investigating organized criminal activity in the Rio Grande Valley pool their historical information, then

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Several Forfeiture Provisions Passed in 1998

The 105th Congress passes forfeiture provisions for identity theft, child nutrition fraud, sexual exploitation, telemarketing fraud, offenses relating to wireless telephones, failure to land aircraft at the order of a federal officer enforcing drug or money laundering laws, obstructing the boarding of a vessel, and trafficking in rhinoceros and tiger products.

By Joseph H. ("Mike") Payne, Attorney, AFMLS, Criminal Division

During 1998, Congress passed a broad range of new forfeiture provisions relating to identity theft, sexual exploitation of minors, child nutrition fraud, telemarketing fraud, offenses relating to wireless telephones, failure to land aircraft at the order of a federal officer enforcing drug or money laundering laws, obstructing the boarding of a vessel, and trafficking in rhinoceros and tiger products. In addition, as part of the Identity Theft and Assumption Deterrence Act of 1998, Congress passed a much-needed technical amendment at 18 U.S.C. § 982(b)(1) to provide procedures for all criminal forfeitures under section 982(a). The following is a brief review of the forfeiture legislation passed by Congress this year.

At the time that this edition of the *Asset Forfeiture News* is being finalized for publication, Congress has passed, but the President has not yet signed into law, most of the provisions discussed below. Consequently, public law numbers and effective dates are included only for provisions known at that time to have been signed into law. The next edition of *Asset Forfeiture News* will update the status of the other provisions by providing public law numbers and effective dates.

Additional Sexual Exploitation Offenses Included for Civil and Criminal Forfeiture

The Protection of Children from Sexual Predators Act (H.R. 3494) adds offenses to the existing statutes that provide for criminal and civil forfeitures for crimes involving sexual exploitation. Sections 602 and 603 of the bill add five offenses to the present sexual exploitation offenses for which forfeitures of child pornography, traceable proceeds, and facilitating property are available under 18 U.S.C. §§ 2253 and 2254. The offenses added to sections 2253 and 2254 are: 18 U.S.C. § 2252A (possession, transport, receipt, sale, distribution, reproduction, etc. of material constituting or containing child pornography); 18 U.S.C. § 2260 (production of sexually explicit depictions of minors for import into the United States); 18 U.S.C. § 2421 (interstate or international transportation of persons for illegal sexual activity); 18 U.S.C. § 2422 (coercion or enticement of interstate or international transportation of persons for illegal sexual activity); and 18 U.S.C. § 2423 (interstate or international transportation of a minor for illegal sexual activity and interstate or international travel to engage in illegal sexual activity with a minor).

Criminal Forfeitures Enacted for Identity Theft Offenses

Section 3 of the Identity Theft and Assumption Deterrence Act of 1998 (H.R. 4151) amends 18 U.S.C. § 1028 (fraud and related activity in connection with identification documents) by inserting a new provision (18 U.S.C. § 1028(b)(5)) which provides for the criminal forfeiture of "any personal property used or intended to be used to commit" any offense under section 1028(a). Procedures for criminal forfeiture under section 1028 are incorporated by reference from 21 U.S.C. § 853 at section 1028(g). Proceeds traceable to any violations of section 1028 are already civilly and criminally forfeitable under 18 U.S.C. §§ 981(a)(1)(C) and 982(a)(2)(B). Unlike forfeitures of section 1028 proceeds under 18 U.S.C. §§ 981 and 982, which include real property, the new

section 1028(b)(5) covers only personal property. In addition, section 1028(b)(5)(C) does not provide broad coverage for the forfeiture of "facilitating" property in general. *Compare* 21 U.S.C. § 853(a)(2) (providing for criminal forfeiture of "any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of [a narcotics offense]"). Consequently, it appears that section 1028(b)(5) is limited to personal property "used or intended to be used" directly in the commission of a section 1028 offense.

Criminal Forfeiture Procedures Provided for All 18 U.S.C. § 982 Forfeitures

In addition, section 6 of the Identity Theft and Assumption Deterrence Act of 1998 makes a much-needed technical amendment at 18 U.S.C. § 982(b)(1) to provide uniform procedures for all criminal forfeitures under section 982. Section 982(b)(1) previously incorporated 21 U.S.C. § 853 criminal forfeiture procedures for forfeitures under certain specifically referenced subsections of section 982(a) and failed to incorporate procedures for subsections that were not referenced. Also, in separate subparagraphs (18 U.S.C. § 982(b)(1)(A) and (B)), some 21 U.S.C. § 853 procedures were made applicable to forfeitures under some sections but not to forfeitures under others. The amended section provides that:

> The forfeiture of property under this section, including any seizure and disposition of the property, and any related judicial or administrative proceeding, shall be governed by the provisions of section 413 (other than subsection (d) of that section) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. § 853).

18 U.S.C. § 982(b)(1) (as amended). The procedural provision that is not included in section 982(b)(1)(A)'s incorporation by reference (21 U.S.C. § 853(d)) sets forth the proof required for the rebuttable presumption applicable in the criminal forfeiture of drug proceeds only.

Criminal Forfeitures Under Child Nutrition Act

Section 203(q) of H.R. 3874 (the William F. Goodling Child Nutrition Reauthorization Act of 1998) amends section 17 of the Child Nutrition Act of 1966 (42 U.S.C. § 1786) by adding a new subsection (p) that provides for the imposition of criminal forfeitures against persons convicted of violations of section 12(g) of the National School Lunch Act (42 U.S.C. § 1760(g)) or of any other illegal trafficking in, misapplication, embezzlement, theft, or fraudulent obtaining of vouchers, other "food instruments," funds, assets, or other property having a value of $100 or more that are issued, or are the subject of a grant or other form of assistance, under section 1786. The new section 1786(p) subjects to criminal forfeiture any real or personal property used to commit or facilitate such violations or that constitutes proceeds traceable to such violations. Standard criminal forfeiture procedures are incorporated by reference from section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. § 853). Unlike other criminal forfeiture statutes, however, section 1786(p) makes criminal forfeiture permissive rather than mandatory upon conviction. It states that the court "may order" forfeiture. Other criminal forfeiture statutes (*e.g.*, 18 U.S.C. § 982(a)(1)) state that the court "shall order" forfeiture. In addition, the distribution of the proceeds from forfeitures under the new provision is governed by section 1786(p)(5) which directs the distribution of amounts realized from forfeitures under section 1786(p) in the following order of priority: first, to reimburse the Department of Justice, the Department of the Treasury, and the U.S. Postal Inspection Service for costs incurred to initiate and complete the forfeiture; second, to reimburse the Department of Agriculture Office's Inspector General for costs incurred in the law enforcement effort resulting in the forfeiture; third, to reimburse federal or state law enforcement agencies for costs incurred in the law enforcement effort resulting in the forfeiture; and fourth, to the appropriate state agencies to carry out the approval, reauthorization and compliance investigations of vendors. This distribution provision is similar to the distribution provision under 7 U.S.C. § 2024(h) (criminal forfeiture for violations involving Department of Agriculture programs under the Food Stamp Act), which remains ineffective because Congress has not incorporated criminal forfeiture procedures for its use.

Civil Forfeiture Provision for Failure to Obey Authorized Orders by Law Enforcement to Land Aircraft or Allow Boarding of Vessel

The Coast Guard Reauthorization Act for Fiscal Years 1998 and 1999, at section 409, provides a new statute, 18 U.S.C. § 2237 ("Sanctions for failure to land or to bring to; sanctions for obstruction of

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boarding and providing false information"), which includes a civil forfeiture provision at section 2237(g) for aircraft and vessels that are "used in" violations of section 2237(a), 2237(b)(1), or 2237(b)(2)(A). Section 2237(a) makes it unlawful for the pilot, operator, or person in charge of an aircraft which has crossed the border of the United States or which is subject to United States jurisdiction while operating outside the United States to knowingly fail to obey an order to land given by an authorized federal law enforcement officer who is enforcing federal drug or money laundering laws. Section 2237(a)(2) authorizes the Administrator of the Federal Aviation Administration, in consultation with the Commissioner of the U.S. Customs Service, and the Attorney General, to prescribe regulations governing the means by which and the circumstances under which a federal law enforcement officer may communicate an order to land aircraft. Section 2237(b)(1) makes it unlawful for the master, operator, or person in charge of a vessel of the United States or a vessel subject to the jurisdiction of the United States to knowingly fail to obey an order to "bring to" that vessel upon being ordered to do so by an authorized federal law enforcement officer. The statute defines the term "bring to" to mean "to cause a vessel to slow or come to a stop to facilitate a law enforcement boarding by adjusting the course and speed of the vessel to account for the weather conditions and sea state." 18 U.S.C. § 2237(e)(4). Section 2237(b)(2)(A) makes it unlawful for any person on board a vessel of the United States or a vessel subject to the jurisdiction of the United States to fail to comply with an order of an authorized federal law enforcement officer in connection with the boarding of the vessel.

The civil forfeiture provision, section 2237(g), incorporates the standard Customs laws civil forfeiture procedures and authorizes such procedures to be performed "by such officers, agents, or other persons as may be authorized or designated for that purpose." In addition, section 2237(g) states that a "vessel or aircraft that is used in violation of this section is also liable *in rem* for any fine or civil penalty imposed under this section."

Civil Forfeiture of Rhinoceros and Tiger Products

Included in both the Wetlands and Wildlife Enhancement Act of 1998 (S.1677) and the Migratory Bird Treaty Reform Act of 1998 (H.R. 2863) is the Rhinoceros and Tiger Conservation Act of 1998, which amends the Rhinoceros and Tiger Conservation Act of 1994 (16 U.S.C. § 5301 *et seq.*) by inserting a new provision that prohibits the sale, import, or export of "any product, item or substance intended for human consumption or application containing, labeled or advertised as containing" rhinoceros or tiger parts. The provision authorizes criminal penalties and civil penalties of $12,000 for each knowing violation by persons engaged in business as importers, exporters, or distributors and civil penalties at the same rate for others who knowingly violate the provision. In addition, "any product, item, or substance sold, imported, or exported, or attempted to be sold, imported, or exported" in violation of the provision or any regulation issued under the provision is subject to civil forfeiture.

The new forfeiture provision does not incorporate the Customs procedural laws for civil forfeitures. It authorizes the Secretary of the Interior, after consultation with the Secretary of the Treasury, the Secretary of Health and Human Services, and the U.S. Trade Representative, to issue implementing regulations, and authorizes the Secretary of the Interior, the Secretary of the Treasury, and the Secretary of the department in which the Coast Guard is operating to enforce the provision "in the manner in which the Secretaries carry out enforcement activities under section 11(e) of the Endangered Species Act of 1973 (16 U.S.C. § 1540(e))." The statute also provides that any amounts received from penalties, fines, or forfeitures under its authority are to be used in accordance with section 6(d) of the Lacey Act Amendments of 1981 (16 U.S.C. § 3375(d))," which provides for the payment of rewards and expense reimbursements to persons (other than government officials and employees) who provide information concerning wildlife conservation violations or provide for the care of fish, plants, or other wildlife pending any criminal or civil proceedings alleging such violations.

Telemarketing Fraud Prevention Act Adds Criminal Forfeiture Provision to 18 U.S.C. § 982 and Wireless Telephone Protection Act Adds Criminal Forfeiture Provision to 18 U.S.C. § 1029

As was discussed by articles in the July/August 1998 edition of the *Asset Forfeiture News*, Congress also passed two additional criminal forfeiture provisions this year which the President has signed into law. On June 23, 1998, Public Law No. 105-184, the Telemarketing Fraud Prevention Act of 1998, amended 18 U.S.C. § 982 by adding a new criminal forfeiture provision at section 982(a)(8) and, on April 24, 1998, Public Law No. 105-172, the Wireless Telephone Protection Act, enacted amendments to 18 U.S.C. § 1029 that include the addition of a new criminal forfeiture provision at section 1029(c)(1)(C).

Section 982(a)(6)(A) Used for First Time by INS

By Sue Czerwinski, Program Specialist, Office of Asset Forfeiture, Immigration and Naturalization Service

In a sting operation that spanned ten months, the Assistant District Director for Investigations (ADDI) James D. Goldman of the Washington, D.C., district office of the Immigration and Naturalization Service (INS) worked undercover to bring down an immigration fraud conspiracy operating in Virginia.

In a March 10, 1998, indictment, Suk Bin Brian Im, an attorney from Annandale, VA; Jimee Y. Choi, a Bureau of Alcohol, Tobacco, and Firearms (BATF) special agent; David Key Lim, owner and operator of J&L Sportswear and Lorton Apparel Inc., Fairfax, VA; and Chul Choi, an immigration consultant and operator of National Employment Services, Flushing, NY, were charged with: conspiracy, bribery of a public official, and immigration fraud. A criminal forfeiture count, utilizing for the first time the authority under 18 U.S.C. § 982 (a)(6)(A), was also charged against property used and intended to be used to facilitate, and the proceeds of, violations of 18 U.S.C. § 1546 and conspiracy to violate section 1546.

Since June 1997, Mr. Im conspired to obtain money from aliens who would pay to receive alien registration receipt cards and other documents to establish lawful permanent resident status in the United States. He paid $82,100 in bribes to ADDI Goldman, who was posing as a corrupt government official, to get Goldman to unlawfully issue immigration benefits. Mr. Im had three coconspirators. BATF Special Agent Jimee Choi accepted money from Mr. Im to provide security for and aid in unlawfully obtaining immigration benefits for Mr. Im's clients. Mr. David Lim used his businesses J&L Sportswear and Lorton Apparel, Inc., as a front for fraudulent applications for immigration benefits for Mr. Im's clients. David Lim sold employment-based immigrant visa slots to other coconspirators for the purpose of permitting a specified alien to immigrate and work at a specified position at his businesses. The immigrant visa slots were used to permit another alien to obtain immigration benefits in the United States where that alien did not intend to, and did not, work at any of Mr. Lim's businesses. Mr. Chul Choi represented alien clients before the INS and recruited alien clients for Mr. Im, providing transportation from New York to Virginia where they would unlawfully receive immigration benefits.

Undercover, ADDI Goldman processed immigration documents for the aliens at the INS Investigations Office in Alexandria, Virginia. ADDI Goldman and another federal agent, working undercover, also provided foreign passports, stamped with an Immigration ADIT stamp, to Mr. Im for these aliens. In total, 101 aliens were to receive fraudulently obtained immigration benefits.

The defendants pled guilty and consented to the order of forfeiture. On May 1, 1998, the district court in the Eastern District of Virginia ordered the following property forfeited to the Government:

- 1994 BMW and $63,000 from Brian Im;
- 1993 Infiniti J30, $50,000, and a gold Rolex watch from Chul Choi;
- 1991 BMW and $40,000 from Jimee Choi; and
- $38,400 from David Lim.

The prosecuting attorneys were Assistant U.S. Attorneys Robert A. Spencer and Thomas G. Connolly, and the case agent was Special Agent James Spero.

Case Study of a Business Forfeiture

By Leonard Briskman, Business Management Analyst, Asset Forfeiture Office, U.S. Marshals Service

It is no secret that the U.S. Attorney's Office (USAO) and the U.S. Marshals Service (USMS) have occasionally failed to interact with one another in the pre-seizure planning process, especially where a business asset has been involved.

On the other hand, what about a successful forfeiture where the Assistant U.S. Attorney (AUSA) and the USMS worked hand-in-hand to forge a plan to manage the business during the forfeiture stage and dispose of the asset after the final order of forfeiture was granted? One such case involves the East Carroll Detention Center, a privately-owned prison in Lake Providence, Louisiana.

Background

Lake Providence is located in northeast Louisiana near the Mississippi River. It is found in East Carroll Parish, which is considered one of the poorest areas in the United States. The detention center was created in April 1990 by a private company called East Carroll Corrections Systems (ECCS), founded by local Attorney Captain Jack Wyly, along with a few relatives and acquaintances. ECCS purchased an old school building, located on ten acres of land, from a local church and erected two additional Quonset Hut-style buildings in the early 1990s to house a maximum of 428 state prisoners in what is considered to be a medium-security facility under Louisiana Department of Corrections (LDOC) Guidelines. The prison was leased by ECCS to the local East Carroll Parish Sheriff's Department who had the responsibility to operate the facility. Typically, the LDOC pays a fee, which is currently $21 per day, to the local Sheriff's Department to house state prisoners for each day the inmate is incarcerated.

Since it was opened in 1990, over $20 million has been paid to the East Carroll Detention Center from the Louisiana Department of Corrections. Under the original terms of the lease, 25 percent of the money (now 20 percent) was allocated to ECCS for rent and the remaining 75 percent went towards normal operating expenses such as security, food, maintenance, and administrative fees.

From early 1990, when it first opened, and continuing for the next five years, Captain Jack Wyly devised a bribery scheme with the local sheriff, Dale Rinicker. In exchange for authorizing the lease of the detention center, Sheriff Rinicker received kickbacks, a hidden ownership interest in the corporation, and a share of the profits from ECCS. A series of financial transactions was used by Wyly to pay Rinicker his share of the profits from ECCS while concurrently concealing his financial interest. Rinicker received in excess of $300,000 in cash from LDOC funds as a result of his illegal and concealed interest in ECCS.

In 1995, the FBI and the Louisiana Legislative Auditor's Office commenced an investigation into the activities of the East Carroll Sheriff's Department in response to suspicions raised by the local district attorney of election fraud in the sheriff's race. The investigation subsequently uncovered the bribery activities. At this time, Rick Willis, AUSA for the Western District of Louisiana, was brought into the case.

In mid-February 1996, after consultation with the USMS in the Western District of Louisiana, AUSA Willis obtained a temporary restraining order (T.R.O.) prohibiting the parties from selling or diverting any of the bank accounts and assets associated with the prison. On March 4, 1996, an injunction was issued, superseding the T.R.O. for a 90-day period. Finally, a protective order was issued on March 12, 1996, following the indictment, which was to remain in effect pending the outcome of the criminal proceedings. The order permitted the continual operation of the prison under the supervision of the USMS and the USAO for the district.

A 20-count indictment was returned on March 7, 1996, against Wyly; Dorothy Morgel, Wyly's secretary; Sheriff Rinicker; and the ECCS, the corporate owner of the prison, alleging money laundering and mail fraud. The indictment also sought forfeiture of various bank accounts, certificates of deposit, the ECCS corporation, and the detention center under

18 U.S.C. §§ 1956(h) and 982(a)(1). Eventually, close to $1.5 million in liquid funds from the various bank accounts would be seized by the Government and placed into an operating escrow account that was used to collect the rent and pay certain maintenance, tax, and insurance bills on the prison.

Rinicker pled guilty to the charges, and on October 17, 1997, ECCS, Captain Jack Wyly, and Dorothy Morgel were convicted of money laundering and mail fraud in connection with the plot to promote and cover up the bribery and hidden interest in ECCS of Sheriff Rinicker. Sentencing was scheduled for April 1998.

Pre-Seizure Planning

In early January 1998, Tim Virtue of the Asset Forfeiture Office (AFO), USMS, received a call from Mike Moriarity, Chief, USMS for the Western District of Louisiana, Shreveport office. Later that month, Mr. Virtue; Mr. Moriarity; Len Briskman, a business management specialist at AFO; and Don Kelly, an outside business consultant for the USMS, met with AUSA Willis in Lafayette, Louisiana. AUSA Willis briefed them on the background and current status of the case. From that time on, he and Mr. Briskman worked closely to successfully bring about the forfeiture and ultimate disposal of the prison.

Both Mr. Briskman and Mr. Kelly visited the prison in late February to perform a business review of the operations, management, and finances. What they found was a facility more akin to a minimum-security prison than a medium-security prison. It was greatly in need of a kitchen, lock down facilities, repairs, and modernization. On the other hand, they did find a prison that was well managed by a professional warden, and an operating business asset that was generating over $50,000 per month in rental income. In fact, after the government seizure, a number of inquiries from individuals and corporations had been made to both AUSA Willis and the local USMS district in Shreveport about the availability of purchasing the facility.

What about a successful forfeiture where the AUSA and the USMS forge a plan to manage the business during the forfeiture stage and dispose of the asset after the final order of forfeiture was granted?

Government Concerns

At about this time, the director of the USMS voiced his concern regarding the ability of the USMS to oversee a working prison. He felt that the United States could possibly face potential liability for harm done by inmates and escapees, especially given the fact that the Bureau of Prison process for assignment or designation would not have been utilized. He also felt that there was a reasonable expectation of a potentially large investment that would be required to upgrade the facility to federal standards. The cost of doing so could overwhelm whatever income that might be derived from the sale of the asset. Another concern was that the United States might only be able to forfeit 40 percent of the outstanding shares of the corporation. The 60 percent majority ownership would still be in the hands of Wyly's friends and relatives.

These concerns were communicated to AUSA Willis in early March 1998 by Katherine Deoudes, Chief of the AFO, USMS. She requested that he postpone filing for the oversight of the prison once it was seized. During the next month, the AUSA; the Asset Forfeiture and Money Laundering Section (AFMLS), Criminal Division; and the AFO, USMS, jointly developed a strategy that entailed a four-step legal and business approach: (1) file for preliminary order of forfeiture, followed quickly by (2) ancillary hearings, (3) a final order of forfeiture, and (4) the sale of the prison at an appraised or market value.

In the meantime, the Deputy Attorney General, in a letter dated April 10, 1998, shared the concerns of the USMS in running the facility, but reiterated that the USMS remain the responsible oversight agency. It was further stressed that the asset should be sold as quickly as possible with periodic reviews with regard to the disposition. On April 14, 1998, Captain Jack Wyly was sentenced to a four-year prison term, and the preliminary order of forfeiture was signed by the judge on the same

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day. The very next day AUSA Willis filed notices for the ancillary hearings.

Disposition Strategy

In close coordination with AUSA Willis, the AFO addressed four key issues in developing a disposition strategy: (1) review of the prison operations, (2) review of the prison financial cooperation, (3) appraisal of the prison, and (4) sale of the prison.

1. *Review of Prison Operations*: The USMS retained the service of Gil Ingram, a retired, former director of the Bureau of Prisons, Southeast Region. He was to assist in evaluating the safety and security of the facility and advise the USMS as to the adequacy of the existing controls. His report detailed the excellent management of the prison by the presiding warden, but warned that potentially serious problems could develop due to the deficient physical structure. Ingram stressed the urgency of disposing of the facility as soon as possible.

2. *Review of the Prison Financial Operations*: Mr. Briskman determined that the prison had adequate financial controls. The prison prepared monthly financial statements and an annual audited statement was sent to the LDOC for their review. Nothing further was recommended in this area.

3. *Appraisal of the Prison*: A Louisiana appraiser with experience in appraising prison facilities was retained by the Western District of Louisiana, USMS. The facility was appraised at $1.2 million based primarily on the income approach. This amount would have been higher had the prison contained a kitchen, lock down facilities, and a cooperative endeavor agreement in place with the LDOC which would guarantee a minimum of 40 percent inmate capacity.

4. *Disposal of the Prison*: A number of corporations, including privately-owned prisons, expressed an interest in purchasing the facility. However, in a key meeting held in Baton Rouge in early May 1998, local, state, and federal officials expressed a strong desire that the ownership be vested within the community, preferably with the Sheriff's Department or a newly created law enforcement district. This was also consistent with the requests voiced by the new sheriff and the local police jury that the profits earned by the prison remain in the community.

During this same period, purported ECCS shareholders filed petitions claiming a majority interest in the prison. AUSA Willis quickly filed a motion to dismiss these claims for lack of standing, arguing that the prison was an asset owned by the convicted corporation, not the shareholders. In July 1998, the court granted the Government's motion due to lack of standing, thereby granting the United States 100 percent ownership in the prison and all the seized bank accounts.

Eliminating the claims of the remaining shareholders proved to be a key ruling in the case. In anticipation of being granted a final order of forfeiture, all parties moved rapidly to conclude a purchase agreement. The East Carroll Law Enforcement and the new sheriff met with local and regional banks to discuss raising $1.4 million in financing, $1.2 million to purchase the prison, and an additional $200,000 to build a new kitchen facility and make needed repairs. The financing would take the form of a revenue bond issue that would be underwritten by one of the banks.

On August 24, 1998, a final order of forfeiture was granted that also ordered the USMS to sell the detention center at fair market value and deposit the sale proceeds, together with all other forfeited funds, into the escrow account pending disposition of all relevant appeals in the case. Events moved quickly thereafter and a simple purchase agreement was drafted by a local attorney representing the East Carroll Parish Law Enforcement District. The agreement was reviewed by AUSA Willis' office, who had real estate and contractual experience in Louisiana. On September 1, 1998, the agreement was signed in Shreveport by the new sheriff and U.S. Marshal J.R. Oakes from the Western District of Louisiana. In early October 1998, the purchase came closer to finalization when both the Louisiana Bond Commission and a regional bank approved the financing; and, on November 16, 1998, the sale was concluded.

Road to Reinvigoration

If your agency was involved in a case that illustrates how forfeiture was used to dismantle a criminal enterprise, send a summary to AFMLS. In addition, we welcome summaries from Assistant U.S. Attorneys and LECC coordinators about their successful and innovative programs, in which they alert prosecutors, agents, or law enforcement officers to the use of forfeiture as a law enforcement tool and train them in forfeiture law and financial investigations. Send your stories to Beliue Gebeyehou, via fax: (202) 616-1344 or DOJ e-mail: CRM20(bgebeyeh).

Oregon Holds 5th Annual Asset Forfeiture Training Conference

By Diane Peterson, Community Relations Specialist; Karen Klever, Asset Forfeiture Paralegal Specialist; and AUSA Leslie J. Westphal, U.S. Attorney's Office, District of Oregon

Building upon the successes of the previous four training conferences, the U.S. Attorney's Office for the District of Oregon sponsored their 5th Annual Asset Forfeiture Training Conference for Law Enforcement and Prosecutors in Eugene, Oregon, on July 28-29, 1998. There were approximately 100 attendees representing local police departments and sheriff's offices throughout Oregon; federal law enforcement agencies, including the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration, the Internal Revenue Service (IRS), the U.S. Customs Service, the U.S. Postal Service; county district attorneys from all corners of the state; and representatives from several joint task forces operating within the district. Several returning participants commented that they look forward to learning the most current information on asset forfeiture, both from local and national perspectives.

Assistant Chief Harry Harbin from the Asset Forfeiture and Money Laundering Section (AFMLS) in Washington, D.C., returned for the fifth consecutive year to make several presentations, including: a discussion of federal forfeiture developments over the past year; comparison of civil and criminal forfeiture; and common pitfalls of forfeiture. Mr. Harbin consistently receives rave reviews, particularly for his style of presentation and his ability to capsulize complex forfeiture information into an easy-to-understand format.

A slight deviation from previous conferences was the expansion of time allotted to state forfeiture. Our presenters were highly experienced attorneys in the state system, including: Oregon assistant attorney generals; Portland assistant city attorney; two assistant deputy district attorneys; and a state asset forfeiture research analyst. Topics covered by these presenters included disbursement of assets, equitable sharing, state forfeiture developments over the past year, and Oregon forfeiture procedure. The state and local program received high marks from attendees for the information and the valuable interaction with the audience. Law enforcement officers told us they were especially appreciative of the time spent with state forfeiture specialists who answered their questions and concerns about current asset forfeiture laws.

The first day of the conference consisted of presentations by federal and state attorneys, while the second day focused chiefly on presentations by agents and local law enforcement with special expertise. Special Agent Donald Semesky, IRS, Criminal Investigation Division, in Baltimore, Maryland, returned for a second year to present another well-received discussion on financial investigations. FBI Special Agent Joe Boyer of Eugene, Oregon, along with Assistant U.S. Attorney (AUSA) Chris Cardani of our Eugene branch office, discussed forfeiture in white-collar cases. As an added topic this year, R. Paul Frasier, a special prosecutor with a local Oregon task force, made a presentation on ethics in asset forfeiture, which stimulated a lively and productive discussion among the audience.

AUSA Leslie Westphal, Chief of the Asset Forfeiture Unit in Oregon, spearheaded the federal portion of the program. She made presentations to the group on federal civil forfeiture, federal criminal forfeiture, equitable sharing, and discussed both federal and state case scenarios. She has

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been directly responsible for the organization and ensuing success of asset forfeiture training in this district.

Program evaluations indicate a high level of interest in these conferences and high marks from the attendees for the subject matter and the quality of the presenters. This office is committed to continuing asset forfeiture training in the District of Oregon for law enforcement, prosecutors, and other interested partners in the criminal justice system.

Innovative Project in District of Montana

By Beth Binstock, LECC Coordinator, U.S. Attorney's Office, District of Montana

In 1996, a 20,000 square foot warehouse was seized from a convicted drug dealer in Billings, Montana. Cooperative efforts between the Drug Enforcement Administration, Montana Narcotics Investigation Bureau, Yellowstone County Sheriff's Office and Billings Police Department led to the successful prosecution and seizure of the warehouse.

Since that time, all agencies have relinquished their possible share of the proceeds of the sale of the building, as U.S. Attorney (USA) Sherry Scheel Matteucci for the District of Montana felt the building could be used as a community facility to provide services for youth.

The U.S. Marshals Service, through "Operation Goodwill," signed the deed for the property over to the Billings Community Crime Prevention Council (CCPC) in August of 1997 with the understanding the U.S. Attorney's Office (USAO) would work to have the project designated a Weed and Seed site. The CCPC has organized various groups such as the Billings "jail crew" and Montana Conservation Corps to clean debris from the building, repair broken windows, and maintain the surrounding grounds.

During this time, USA Matteucci established a Weed and Seed Steering Committee with representatives from law enforcement, corrections, city and county officials, schools, and the private sector. A local architect donated his time and energy to conduct a feasibility study on the warehouse. He determined it is feasible to renovate the building and estimated the initial phase would cost approximately $1.2 million.

The steering committee determined there is a definite need for a juvenile assessment and resource center. At-risk youth could be brought to the center by law enforcement or referred by schools and other service programs. It is *not* the intention to create new programs, but to house personnel from existing agencies to provide a variety of services under one roof. The objective is to assess the needs of youth at the earliest possible sign of behavioral or criminal activity. Potential users and beneficiaries of the center would be law enforcement, juvenile probation, the Tumbleweed Runaway Program, and certified counselors.

Due to the size of the building, there is the potential for other programs such as recreation and job skills training to utilize the space. Another goal is to have the facility serve as a repository for criminal justice information and research.

Earlier this year Montana's congressional delegation requested a 1.2 million-dollar, onetime appropriation to begin renovation. There has been no determination on that funding to date. The CCPC, the USAO, and the Montana Board of Crime Control have been researching other sources for potential funding. An immediate priority is to hire a "site-coordinator" to oversee the project in conjunction with the USAO, Crime Prevention Council, and the steering committee.

This month United Postal Service (UPS) awarded the CPCC a $50,000 grant to assist with renovation. As a result of a news article about the project, many individuals and agencies have come forth to donate time, energy and equipment. This includes: two local architects who are working on the spatial design; Montana National Guard; equipment and furniture from the Office

of the Inspector General; and air-conditioning units from a local attorney. The coordinated efforts on this project are invigorating, not only to the people involved, but many throughout the community. It is our hope the center will be operational within one year.

Asset Forfeiture Training in the Eastern District of Arkansas

By Amanda Warford, U.S. Attorney's Office, Eastern District of Arkansas

The Law Enforcement Coordinating Committee (LECC) for the Eastern District of Arkansas and the Asset Forfeiture and Money Laundering Section (AFMLS) recently cosponsored training in Little Rock for law enforcement officers and prosecutors.

U.S. Attorney Paula J. Casey kicked off the seminar by presenting over $40,000 in equitable sharing checks to several state and local agencies.

On October 6, a one-day conference was held for over 50 law enforcement executives and prosecutors. Deputy District Attorney Dee Edgeworth, San Bernardino County, California, gave an excellent overview of asset forfeiture and an ethics presentation that really got the audience involved. Assistant Chief Alice Dery, AFMLS, provided valuable information on resource allocation, legislation, trends, and updates; and Attorney Araceli Carrigan (AFMLS) taught equitable sharing with the input of local representatives of the Federal Bureau of Investigation, the Drug Enforcement Administration (DEA), and the U.S. Marshals Service. Of course, Alice and Celi did their "icebreaker" activity which was a big hit with the participants—especially for those who won prizes! A working lunch was held during which a state prosecutor discussed state forfeiture laws.

A Basic Asset Forfeiture Conference for Line Officers was conducted on October 7-8. These officers were exposed to most of the same topics as the executives, but additionally they learned about constitutional protections from Dee Edgeworth. Also, Lenora Sowers, DEA headquarters, gave a very informative presentation on investigative techniques. U.S. Deputy Marshal Chip Massanelli did a great job discussing the custody, management, and disposition of assets. Finally, the group participated in an investigative techniques workshop, which was facilitated by AUSA Ken Stoll. This portion of the conference was particularly well received.

All of the conference evaluations were very favorable, and several attendees commented that the presenters seemed genuinely interested in assuring that participants learned much from the course. Many positive comments were made about the high quality and professionalism of the speakers.

We were very privileged to have had these excellent trainers in our district! Thanks to AFMLS for all their help in coordinating this very successful conference.

Drug Enforcement A-Z: "F" is for Forfeiture

By AUSA Rena Johnson, and Sandra Keil, LECC Manager, U.S. Attorney's Office, Middle District of Georgia

The Country Hearth Inn in Pooler, Georgia, was the site of the 1998 Fall LECC Conference cosponsored by the U.S. Attorney's Offices (USAOs) for the Middle and Southern Districts of Georgia, the Drug Enforcement Administration's (DEA's) Atlanta field division, and the Chatham-Savannah Counter-Narcotics Team. This year's theme was "Drug Enforcement A-Z."

Approximately 100 attendees from the Middle and Southern Districts of Georgia participated in the conference, most of whom were Georgia state patrol troopers or drug task force agents.

On the first day of the conference, the participants heard a three-hour lecture on federal asset forfeiture and equitable sharing. A panel consisting of Assistant U.S. Attorney (AUSA) James Coursey from the Southern District of Georgia, AUSA Rena Johnson from the Middle District of Georgia, and Paralegal Allison Largeman from Dyncorp, DEA, gave this lecture.

Ms. Largeman discussed the proper procedure state and local officers should use to refer a seizure to DEA for adoption. AUSA Coursey then discussed the permissible and impermissible uses of equitably shared funds. AUSA Johnson gave the attendees an overview of the federal asset

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forfeiture laws. AUSAs Coursey and Johnson then discussed with the attendees "hot topics," including: the utility of dog sniffs to establish probable cause that seized currency constitutes drug proceeds; and the *dos* and *don'ts* of traffic stops in which a large amount of currency is discovered in the vehicle. The panel format proved especially effective in encouraging questions from the audience.

LECC Federal Agency Forfeiture Group in the Western District of Missouri

By AUSA Rebecca Tillman, U.S. Attorney's Office, Western District of Missouri

The Western District of Missouri has formed an LECC Federal Agency Forfeiture Group, which meets about four times a year. The purpose of this group meeting is to improve communication. We communicate on problems, policy, procedures, agency requirements, staff changes, responsibilities, legal updates and interpretations, training, and anything else that needs to be addressed. The result is that we are more proactive than we were before this group formed over six years ago. When problems arise, we all know whom to call or what to do.

Asset Forfeiture: Making Crime Pay in the District of South Dakota

By Martha Kohn, U.S. Attorney's Office, District of South Dakota

"Asset Forfeiture: Making Crime Pay" was the subject of the June 15-16, 1998, LECC meeting in Pierre, South Dakota. This training was a coordinated effort between the South Dakota Attorney General's Office and the U.S. Attorney's Office (USAO) and was attended by approximately 113 individuals representing 46 federal, state, county, city, and tribal agencies. The planning team included: Assistant U.S. Attorneys (AUSAs) from South Dakota and Tampa, Florida; a state assistant attorney general; two Division of Criminal Investigation agents; the state law enforcement training director; and our LECC coordinator.

This conference was designed to reinvigorate local, state, and federal law enforcement officials and prosecutors about asset forfeiture, as well as provide updates on the latest court decisions impacting this area of the law. As part of the full day's training devoted to asset forfeiture, AUSA Virginia Covington, Chief of the Asset Forfeiture Unit, USAO, in Tampa, Florida, along with Duane Dahl, field supervisor of the South Dakota Division of Criminal Investigation, delivered an overview of federal and state forfeiture law.

Following this well-received presentation, Field Agent Chad Evans, South Dakota Division of Criminal Investigation, presented a case study loosely based on an actual joint state and federal drug prosecution that included asset forfeiture. The case study included examples which illustrated interagency cooperation as well as problematic areas which developed throughout the investigation and prosecution of the case. Members of the various agencies represented in the case study participated in the panel discussion. These members included: the Drug Enforcement Administration; the Internal Revenue Service's Criminal Investigation Division; U.S. Marshal's Office; South Dakota Attorney General's Office; South Dakota Division of Criminal Investigation; and the USAO. Each panelist outlined the specific area of their agency's involvement in the case, areas that could have been handled differently, and problems that were resolved favorably or unfavorably with suggestions for the future. The panel discussion was well received and generated a considerable amount of audience participation.

To conclude the training, South Dakota Attorney General Mark Barnett and U.S. Attorney (USA) Karen E. Schreier addressed the issue of equitable sharing and its unique aspects as defined by state and federal law.

Following the LECC conference, AUSA Virginia Covington spent time with the USA and the district's criminal and civil

AUSAs to specifically address prosecution questions and concerns. As always, AUSA Covington's enthusiasm and knowledge of the topic was well received by everyone. She comes highly recommended to other districts who are contemplating a statewide interagency training.

An extensive package of handout materials related to both federal and state forfeiture laws was developed for distribution at the LECC meeting. This package included submissions from the agencies represented on the panel. It also included two local publications:

- *Field Officers Guide to Federal Asset Forfeiture*, which briefly explains what to seize and look for, how to start a federal forfeiture, sharing forfeited assets, and lists the various federal asset forfeiture contacts for our district. (This pamphlet was originally modeled after a similar pamphlet from the District of Kentucky and may easily be adapted for use in other districts.);
- *A Guide to South Dakota Asset Forfeitures in Drug Cases*, developed by the South Dakota Attorney General's Office for use by state officers in the development of asset forfeiture cases.

In addition to cosponsoring the LECC conference, the District of South Dakota has made a number of changes within the district in an effort to reinvigorate prosecutors and law enforcement officials about asset forfeiture. USA Schreier has reorganized the coordination of asset forfeiture cases by assigning specific AUSAs by geographic division. The district has also developed a "district asset forfeiture policy" and continues to update AUSAs about the everchanging legal developments at monthly Criminal Division meetings.

We also distributed a sufficient number of copies of *Field Officers Guide to Federal Asset Forfeiture* to every state, county, city, and tribal law enforcement agency, so that each officer would have access to these basic guidelines. This pamphlet will also be used by the State Law Enforcement Training Academy in training new police officers.

As a result of these attempts, the District of South Dakota is beginning to see a positive change in attitudes toward the topic of asset forfeiture and will continue to promote asset forfeiture as an effective tool in our war on crime.

International Association of Auto Theft Investigators Meeting in the Northern District of Oklahoma

By AUSA Catherine Depew, and Linda Peaden, Paralegal Specialist, U.S. Attorney's Office, Northern District of Oklahoma

From August 2-7, 1998, the International Association of Auto Theft Investigators met in Tulsa, Oklahoma. This organization sponsored an auto theft and insurance fraud seminar as a forum for exploration of issues of concern to their membership and others in attendance. Approximately 400 participants from ten different countries attended the seminar. Assistant U.S. Attorney Catherine Depew presented an overview of federal forfeiture statutes to approximately 30 participants.

Passenger Bus Used for Sale of Controlled Substances

By Gayle Kinsley, Office of Public Affairs, U.S. Attorney's Office, Northern District of Florida

On September 14, 1998, U.S. Attorney (USA) P. Michael Patterson presented to Colonel Curt Hall of the Florida Highway Patrol the title to a 1992 Van Hool passenger bus. U.S. District Court Judge Lacey A. Collier made a finding that the passenger bus was utilized, or intended to be utilized, to facilitate the sale of controlled substances. In January 1998, Judge Collier ordered the bus forfeited to the Government.

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Do you know whom to call for . . .

- article submissions to the *Asset Forfeiture News* or the *Money Laundering Monitor*?
- general questions about AFMLS publications?
- copies of AFMLS publications?
- changes to AFMLS mailing list?

Get your copy of the Publications Unit rolodex card. Call (202) 305-3049 today!

Road to Reinvigoration

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On December 10, 1997, a Miami resident, Carlos Marino, was found guilty of conspiracy to possess with the intent to distribute cocaine, conspiracy to import cocaine, and possession with the intent to distribute cocaine in the U.S. district court in Pensacola. Evidence introduced during Marino's three-day trial before Chief U.S. District Judge Roger Vinson established his participation along with codefendant Everth Lopez in a long-term smuggling operation with direct ties to Colombia importing hundreds of kilograms of cocaine to the United States hidden in flatbed trailers driven across the Mexican border into Texas and on to Miami for unloading and distribution.

Lopez was arrested on August 15, 1997, after his tractor trailer was stopped at an Interstate 10 weigh station in Escambia County, Florida, carrying a load of Mexican tiles bound for Miami. State Department of Transportation inspectors became suspicious about the trailer and summoned officers from the Florida Highway Patrol who discovered 223 kilos of cocaine hidden in specially constructed compartments in the two I-beam supports for the trailer. Lopez agreed to cooperate and identified Marino. Marino was arrested two days later when he appeared at a Miami grocery store for a meeting arranged by Lopez under law enforcement supervision.

After the jury found him guilty, Marino agreed to the entry by the court of a criminal forfeiture judgment against him in the amount of $2 million. Assets seized for forfeiture in addition to the 1992 European-style tour bus with two hidden compartments included: a tractor trailer operated by Lopez; four passenger vehicles; printing press equipment valued at $100,000; $9,000 in cash; and jewelry valued at approximately $14,000.

Lopez was sentenced on June 25, 1998, to 42 months in federal prison followed by five years supervision release. Lopez testified in Pensacola federal court against his codefendant, Marino, and also testified in federal court in New York City in a trial against a Colombian national charged with running an international cocaine smuggling organization between Colombia and the United States.

Marino was sentenced on February 24, 1998, to 30 years and five months federal prison followed by five years supervised release.

The successful prosecutions of Lopez and Marino were the result of the joint efforts of an Organized Crime Drug Enforcement Task Force operation with participation by the Florida Department of Transportation; the Florida Highway Patrol; the U.S. Customs Service; the Drug Enforcement Administration; and the U.S. Attorney's Office, Northern District of Florida, Pensacola Division.

Are you considering writing an article for the *Asset Forfeiture News*, but don't know where to begin?

WE CAN HELP !

Are you a federal prosecutor who would like to submit a case for the *Quick Release*?

WE CAN HELP !

The Asset Forfeiture and Money Laundering Section has guidelines to help you write your submissions.

PLEASE CALL (202) 305-3049 TO RECEIVE A COPY OF THESE GUIDELINES.

Asset Forfeiture Online

Asset Forfeiture Online (AFO), a central source of forfeiture materials for federal prosecutors and law enforcement personnel, is now on the Intranet. If you have not yet requested access, contact the AFO system operator at (202) 307-0265.*

The Case Finder: A Popular AFO Feature

The *Case Finder* is a topical summary of forfeiture case law that is compiled and indexed daily by Attorney Barry Blyveis, AFMLS, Criminal Division. The purpose of the *Case Finder* is to help practitioners locate relevant law and other materials that will support their forfeiture cases. Since the *Case Finder* is organized alphabetically by topic, you should first select the topic area of interest and then read the latest supplement to check for the most recent case law on that topic.

How to locate and use the *Case Finder* from the AFO home page:

1. Click on **Files** (omit this step if you are a LEO user).
2. Click on **Case Finder** on the File Area listing page.
3. Click on the subfile area that is most likely to contain your topic:

   Table of Contents and Supplements
   Subjects from A to D (Abatement to DEA)
   Subjects from E to G (Effect to Grand Jury)
   Subjects from H to M (Hearing to Moiety Statute)
   Subjects from M to Q (Money Laundering to Quiet Title)
   Subjects from R to Z (Realty to Writ of Error)
   Statutory Provisions

4. Click on a topic name from the index.
5. Click on the **Back** button on your browser tool bar until you return to the listing of subfile areas.
6. Click on "Table of Contents and Supplements."
7. Click on the most recent supplement name and review it to find the updated case law on your topic.

Questions or comments about the AFO should be directed to the AFO system operator at (202) 307-0265.

* *Available access and features will vary depending on whether you work for the U.S. Department of Justice, a non-Justice federal agency, or a state or local government agency.*

People and Places . . .

New USCS Commissioner

Raymond W. Kelly was sworn in as the Commissioner of the U.S. Customs Service (USCS) on August 4, 1998.

As Customs Commissioner, Mr. Kelly directs over 19,000 employees responsible for enforcing hundreds of laws and international agreements which protect the American public. The USCS collects roughly $20 million annually in revenue from U.S. imports; protects our borders against illegal importation of narcotics and other contraband; enforces laws intended to prevent illegal trade practices and laws to prevent the export of high-technology products and weapons; and processes more than 450 million persons entering the United States each year.

Prior to his appointment, Mr. Kelly had served as the Under Secretary for Enforcement of the Department of Treasury since 1996. As Under Secretary, Mr. Kelly had direct supervisory authority over the Department's enforcement bureaus, including: the USCS; the U.S. Secret Service; the Bureau of Alcohol, Tobacco, and Firearms; the Federal Law Enforcement Training Center; the Financial Crimes Enforcement Network; and the Office of Foreign Assets Control.

Mr. Kelly brings to the position more than 30 years of experience and commitment to public service. A former marine who served in combat in Vietnam, he rose through the ranks of the New York City Police Department, serving in 25 commands, before becoming commissioner in August 1992, a post he held until his retirement in January 1994. His leadership was critical in the successful investigation of the World Trade Center bombing in 1993. He retired as a Colonel in the U.S. Marine Corp.

Mr. Kelly was recognized as New York State's Law Enforcement Official of the Year in 1993.

During the crisis in Haiti in 1994, President Clinton named Mr. Kelly as Director of the International Police Monitors of the Multinational Force. These monitors helped to establish Haiti's interim public security force.

President Clinton awarded Mr. Kelly a commendation for exceptionally meritorious service. Chairman of the Joint Chiefs of Staff General Shalikashvili awarded him the Commander's Medal for Public Service.

In October 1997, Mr. Kelly was elected Vice President of the Americas for INTERPOL.

Mr. Kelly is an attorney with law degrees from St. John's University and New York University, where he has lectured on the law, public policy, and crisis management. He is a graduate of Manhattan College and holds a master's degree in public administration from the Kennedy School of Government at Harvard University. He was awarded an honorary doctorate from Marist College in May 1995, Manhattan College in 1996, College of St. Rose in 1997, and St. John's University in 1998 in recognition of his distinguished career in public service.

AUSA Stoll Now Handles All Forfeiture Matters for the Eastern District of Arkansas

Assistant U.S. Attorney (AUSA) *Ken Stoll* is now handling all asset forfeiture matters for the Eastern District of Arkansas. AUSA Stoll has been with the U.S. Attorney's Office (USAO) for 27 years, and, during that time, he has worked on both civil and criminal cases in the office. From 1975-1989, he served as First AUSA and Chief of Criminal Division, and as interim U.S. Attorney from July-November 1987.

New AUSA Joins the Western District of New York

In August 1998, *Sylvia McCoy Johnson* joined the Asset Forfeiture Unit of the U.S. Attorney's Office for the Western District of New York in Buffalo.

Prior to transferring to Buffalo, she worked in the Criminal Division of the Western District of New York's Rochester branch office. She previously worked as a congressional liaison for the U.S. Postal Service at its Washington, D.C., headquarters office. Before that, from 1988 to 1993, she worked as a trial attorney for the Atlanta field office's Antitrust Division, Department of Justice.

Sylvia graduated from the

Georgetown University Law Center in Washington, D.C., and worked for the Honorable Sam Nunn of Georgia and other Capitol Hill legislators before joining the Antitrust Division.

New Money Laundering Attorney Joins AFMLS

Stephen R. Heifetz recently joined the Asset Forfeiture and Money Laundering Section (AFMLS), Criminal Division, as an attorney specializing in strategic initiatives to combat money laundering.

Prior to joining AFMLS, Mr. Heifetz worked as an attorney in the Office of General Counsel at the Central Intelligence Agency (CIA), where he focused on operational legal issues, export laws, and government contracts. Mr. Heifetz received two exceptional performance awards for his work at the CIA.

In 1996, Mr. Heifetz graduated magna cum laude and order of the coif from Georgetown University Law Center. At Georgetown, Mr. Heifetz was the senior articles editor of *The Georgetown Law Journal* and an Olin fellow in law and economics. He received awards for several papers, some of which have been published in law journals.

In 1993, Mr. Heifetz graduated with distinction in political science from Stanford University. Prior to graduating from Stanford, he spent one year studying political philosophy at Pembroke College, Oxford University.

Treasury Forfeiture Fund Welcomes New Professional Staff

Treasury's Executive Office for Asset Forfeiture (T-EOAF) welcomes *Janet Powell* as the newest member of its policy and operations group. Ms. Powell joins T-EOAF from the U.S. Department of Labor where she was employed with the Pension and Welfare Benefits Administration as an investigator and later with the Office of the Chief Accountant. Ms. Powell received a bachelor's degree from the University of Maryland in College Park and a juris doctor from the Columbus School of Law of the Catholic University of America.

Two New Positions at Western District of Missouri

In July 1998, *Robin McKee* was appointed Assistant U.S. Attorney (AUSA) for the Western District of Missouri by the Honorable Stephen L. Hill, Jr., U.S. Attorney. As an AUSA, she is the designated asset forfeiture attorney for the Springfield branch office, in addition to continuing her responsibilities as a drug prosecutor.

AUSA McKee first joined the Department of Justice in July 1997 as a Special Assistant U.S. Attorney (SAUSA) for the district under the HIDTA program. As an SAUSA, she was assigned to the drug unit with responsibility for the investigation and prosecution of methamphetamine cases.

Prior to joining the Department, she was an assistant prosecutor in the Jasper County, Missouri, Prosecutor's Office. During that time, she also served as an adjunct professor of criminal law at Missouri Southern State College for one semester. She graduated from the University of Missouri-Columbia School of Law in 1994 and received her bachelor's degree in political science from Missouri Southern State College in 1991.

Patricia L. ("Trish") Cherry joined the U.S. Attorney's Office (USAO), Asset Forfeiture Unit, of the Springfield office, as a legal secretary. She will be working closely with AUSA Robyn McKee. Prior to joining the USAO, Ms. Cherry worked in private law firms as a legal secretary for eleven years. She attended Southwest Missouri State University where her major was public relations.

FDA OCI Operations Manager Says Goodbye to Asset Forfeiture Community

Former Food and Drug Administration, Office of Criminal Investigations, Operations Manager *John J. Rooney* bids the asset forfeiture community a fond farewell. Mr. Rooney has accepted a position with the Inspector General's Office, U.S. Postal Service, as special assistant to the Inspector General. John is known for his tenacity in everything he does, including making things happen, and for his ability to make people feel important. John is willing, as his job permits, to assist agencies by providing instruction on forfeiture activities. Who knows, we may see John involved in forfeiture again in the near future. John, the asset forfeiture community wishes you well in your new position.

International Cooperation with Central America

By Linda M. Samuel, Special Counsel for International Forfeiture Matters, AFMLS, Criminal Division

During the week of September 14, 1998, the Asset Forfeiture and Money Laundering Section (AFMLS) sponsored a forfeiture and money laundering conference in San Jose, Costa Rica, for prosecutors from Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, and Panama. The United States was represented by attorneys from AFMLS, the Office of International Affairs, the Drug Enforcement Administration, and the U.S. Attorneys' Offices in Jacksonville, Miami, New York, San Diego, and Tallahassee.

The conference was opened by President Miguel Angel Rodriguez of Costa Rica, and closing remarks were provided by the Honorable Thomas J. Dodd, U.S. Ambassador to Costa Rica, and Deputy Assistant Attorney General Mary Lee Warren. The seminar also ended with the execution of a case specific asset sharing agreement between the United States and Costa Rica authorizing the transfer of $180,000 involving assets located in Costa Rica that were forfeited in a criminal prosecution in the Southern District of California, which underscored for the participants one of the tangible benefits of international forfeiture cooperation.

Throughout the week, frank discussions took place regarding the legal capabilities of each of the countries in financial investigations and the existing political and legal impediments that prevent them from being able to provide forfeiture and money laundering assistance. It was disheartening to confirm that three of the eight participating jurisdictions—El Salvador, Guatemala, and Nicaragua—are not in compliance with internationally recognized anti-money laundering standards, because they have still not yet made money laundering a crime. Indeed, representatives from two of these countries indicated that the failure of their governments to do so was based on a perception that it will hurt investments in their jurisdictions if bank secrecy can be pierced for law enforcement. El Salvador has introduced money laundering legislation, and we are hopeful as of this writing that its passage is imminent. Honduras criminalized money laundering, but it is unfortunately limited to drug trafficking offenses. Since the enactment was in February 1998, Honduras has not yet had any practical experience with its law.

On the other hand, Costa Rica, Dominican Republic, and Panama appear to have made great strides in this area. All three countries have forfeiture, money laundering, and international cooperation laws. Panama was the only country in attendance with which the United States has a mutual legal assistance treaty. None of the countries has an established practice for asset sharing, and some indicated that sharing is not contemplated under their laws. However, Costa Rica indicated that they had the ability to share forfeited proceeds in drug cases with an international agreement.

The participants identified many obstacles that hinder both prosecutions in Central America and the enactment of necessary legislation. For countries with forfeiture and money laundering laws, many participants indicated that they lacked the expertise to conduct financial investigations and utilize their new laws. They also identified a basic problem with their legal structure in that prosecutors lack independence and could be told not to pursue a particular case if the target was "important" enough. Additionally, some countries claimed that their judges were not familiar with the subject matter of forfeiture and money laundering, making it difficult to present a case before them. For countries without adequate forfeiture and money laundering laws, the problem seemed uniformly how to create political will necessary to effectuate change.

Overall, there was broad recognition by all the conference participants that the Central American region, for a number of reasons, including its proximity to producing countries, remains vulnerable to money laundering of drug proceeds. We also shared our concern that most participants believe that there were no open lines of communication to share readily forfeiture and money laundering information—even

though the countries in attendance were all neighbors. To deal with this, AFMLS is compiling a resource guide concerning how to obtain forfeiture and money laundering assistance in the region, as well as identifying points of contact.

The following text was extracted from a presentation at the conference in Costa Rica given by Supervisory Special Agent Vance M. Stacy, DEA country attache, on the role of law enforcement in asset forfeiture.

Excerpt from the "Role of Law Enforcement in Asset Forfeiture" Presentation

Speech given by Vance W. Stacy, Supervisory Special Agent, DEA Country Attache, Costa Rica Country Office, at Forfeiting the Proceeds of Crime Seminar, held in San Jose, Costa Rica, in September 1998

... I am happy to present to you the [p]olice perspective of our role in asset forfeiture.

... Historically, we in law enforcement have focused only on the seizure of the drugs, and the arrests of principal figures in an investigation. Asset forfeiture was considered a collateral issue—something that we thought about at the end of the investigation. In reality, asset removal should be amongst the top priorities of any major investigation. ... It's incumbent on the case agent and the prosecutor to agree during their initial consultations ... (working as a team) ... that the seizure of assets will in fact be considered a priority. ... The identification of seizable assets and the accumulation of supporting evidence should be an ongoing process throughout the case, and not an afterthought.

We as investigators bear a responsibility to be familiar with the laws and regulations dealing with forfeiture. This is a problem, ... not only within your [p]olice forces, but also within the law enforcement community in [the United States]. ... [T]he laws concerning asset forfeiture are complicated, and I offer you an alternative. With both DEA and the FBI, in the larger field divisions, there exist ... "asset removal groups." These are groups of five to ten agents that have been specifically trained in forfeitures, and they act as a support mechanism in most complex investigations. ... [Y]ou may want to consider—as an alternative to training 50 or 100 or 500 cops in asset forfeiture—train[ing] a small group, but have them available to support your significant cases.

... [P]rosecutors will count on the agents to do most of the leg work to gather evidence to support forfeitures. ... [T]his should be an ongoing process, primarily in a discreet fashion ... because ... most traffickers have an "emergency" plan, and as soon as they suspect the existence of an investigation, they will begin to liquidate assets, move money, and take any steps necessary to keep their money and their property from you.

Employ Techniques to Identify Assets

Surveillance: [I]n addition to trying to identify stash houses, etc., [surveillance] can help us to identify property, banks utilized by our principals, locations of safety deposit boxes, brokerage firms, etc. Also, in the case of vehicles, it allows us to document who utilizes a certain vehicle; in the case of a straw purchase, a vehicle registered in someone else's name, we can document that our principal utilized the vehicle X% of the time. This will prove invaluable in court proceedings, attempting to demonstrate that the principal is the true owner of the asset.

Informant Utilization and Debriefings: ... [M]ost, if not all, of the emphasis of debriefings is placed on the trafficking aspects of the case. Here we often have an individual who has spent considerable time with our primary target(s), and who well may possess information concerning the location of seizable assets, if only the right questions were asked. ... Traffickers ... brag about their "toys," their luxuries, and their cunning in terms of concealing their assets. There is often a wealth of information to be gained through the well-focused debriefing of informants. ... [A] cooperating source [who] is still close to our target may be tasked with soliciting much of the information we seek.

Undercover Operations: ... [T]his can also be an invaluable tool in the collection of information concerning seizable assets. If an undercover agent is able to gain access to a principal target, his/her observations/questions may provide information leading to, or substantiating, seizure of assets.

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International Cooperation with Costa Rica

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Mail Covers: In [the United States], we are able, through a court order, to request from our Postal Service a list of return addresses for mail received at target's address. ... This can provide valuable leads towards identifying assets.

Garbage Runs: ... We can gain access to items such as envelopes with return addresses, discarded statements, etc.

Electronic Devices: ... [W]iretaps are legal only in a few countries in the region. If you are able to use them, they can be extremely valuable in helping to identify assets. But only if your monitors are alert to these possibilities. Instruct them to document conversations involving use of assets such as vehicles, boats, aircraft, visits, or references to banking or financial institutions, residences, movement of cash, etc.

Grand Jury and Administrative Subpoenas: For bank records, tax records, and other documentation important to supporting asset forfeiture. Be alert to notification regulations, in terms of keeping your investigation discreet.

Most federal agencies in the United States will have begun, via field offices, to research the possibility of assets nationwide. But also be alert, through travel and immigration records, telephone records, etc. to the possibility of assets overseas. Remember that asset seizure in a foreign country can be a prolonged ordeal: do your homework and give yourself plenty of time to go through the letter rogatory process. Accurate and ongoing documentation is a must. If it is not in a report, it does not exist.

As the primary investigation winds down, begin to prepare seizure warrants. These need to be ready at the same time as arrest and search warrants.

If overseas assets are identified, coordination with the Department of Justice and the Department of State, ... must be done early.

Identify individuals who may be able to shed light on assets (car salesmen, real estate brokers, investment counselors, etc.) to interview at conclusion of the investigation, when compromise is not a threat.

Search Warrants: This is probably your best opportunity to gather information to support your forfeiture actions. These should be planned in the most minuscule detail, based on your best information and intelligence to date. ... [Y]ou will have one shot at searching your principal's residence or business, make it your best. Use surveillance reports, informant debriefings, undercover penetrations to assemble a mental picture of the target location. Plan on what you will require to do the most complete search possible.

In [the United States], the U.S. Marshals Service is responsible for the maintenance of seized assets pending forfeiture. ... [Y]ou need to anticipate any unusual maintenance problems, *i.e.*, a business which must continue to operate, livestock, etc., because the Government becomes responsible at the time of the seizure.

Work out asset sharing percentages, if applicable, with other agencies prior to seizure.

Post-arrest

... The real work begins after the arrests and seizures take place in preparing for trial. ... [T]he investigators are scarce at this point. ...

Before the arrests, the agents and prosecutors should have an idea of potential pleas, and if assets will be incorporated into pleas. (Be careful: pleas that include asset relinquishment can be construed to appear to be a "bought" lesser sentence.)

Are there coconspirator that may be in a position to shed light on potentially seizable assets? Post-arrest statements should also focus on this.

In almost every major investigation there will be significant follow-up: witnesses to be located and made available, subpoenas to serve, documents to acquire, etc. The agents need to recognize that their role includes these duties.

Finally, the agent should accompany the prosecutor [to the] trial [or] hearing.

Operation Riverside Meeting Held

***Riverside**, from page 11*

sufficient evidence can be pulled together to bring civil forfeiture actions against these properties. The El Paso Intelligence Center and the Texas Department of Public Safety Post Seizure Analysis Team are being used to identify agencies having information about the target properties and businesses. Once this information is identified, the participating agencies are contacted so that reports and other evidence can be obtained. These reports are compiled into a prosecutive report that is presented to the U.S. Attorney's Office (USAO) for the Southern District of Texas. Currently, all of the personnel devoted full-time to Operation Riverside are being provided by the Federal Bureau of Investigation (FBI) or are Dyncorp contract employees funded for that purpose by the Department of Justice Assets Forfeiture Fund.

The first year of Operation Riverside has been used to lay the ground work for the successful future cooperation by the agencies. Significant support from the Assets Forfeiture Fund has helped provide the equipment, contract personnel support, and other logistical needs of the operation. A Memorandum of Understanding is currently being circulated among the agencies to formalize the creation of the Operation Riverside Task Force.

On October 22, 1998, a meeting was held for the various federal, state, and local agencies participating in Operation Riverside. The meeting took place in McAllen, Texas, and provided the following agencies in attendance with an update on the activities of the Operation Riverside Task Force: the USAO for the Southern District of Texas, the FBI, the Immigration and Naturalization Service, the U.S. Customs Service, the Drug Enforcement Administration, the U.S. Marshals Service, Texas Department of Public Safety, Texas Attorney General's Office, Hidalgo County District Attorney's Office, Hidalgo County Sheriff's Department, and other agencies.

Even as administrative aspects of Operation Riverside are being put in place, the initial targets have been identified and work has begun to remove those resources from the criminal organizations. Several owners whose real property has been extensively used to cross drug loads into the United States have been confronted with the possibility of having their land seized for forfeiture and, thus, persuaded to cooperate fully with the Border Patrol to prevent the illegal use of their land in the future. Investigation is ongoing into one bank which, according to many witnesses, has been used to launder drug proceeds for many years. Another target is a prominent businessman who has reportedly allowed a number of these properties and businesses to be used by drug organizations. Input is being sought from any of the participating agencies concerning additional potential targets.

It is anticipated that, during fiscal year 1999, the first seizures will take place under Operation Riverside. Fiscal year 1999 will also see the Operation Riverside agencies provided with specialized training opportunities in areas relating to the successful seizure and forfeiture of assets. Any of the participating agencies can receive a briefing on the status of Operation Riverside by contacting FBI Special Agent Tracey Corley at (956) 984-6418 or FBI Supervisory Special Agent Bill Vanderland at (202) 324-8630.

Depriving the criminal organizations of these services will hinder their operations in ways that the mere seizure of drugs and the arrest of low-level mules could never achieve.

UPCOMING TRAINING CONFERENCES

FEDERAL FORFEITURE

- *Advanced Asset Forfeiture*
  January 20-22, 1999
  Columbia, SC
- *Fifth Circuit Component Seminar*
  February 1999
  Location TBA
- *Financial Investigations for AUSAs / Agents*
  March 23-25, 1999
  Columbia, SC
- *Dual Level Support Staff Seminar*
  April 13-15, 1999
  Columbia, SC
- *Asset Forfeiture for Criminal Prosecutors*
  May 11-13, 1999
  Columbia, SC
- *Fourth Circuit Component Seminar*
  June 22-24, 1999
  Columbia, SC
- *Advanced Money Laundering*
  July 20-22, 1999
  Columbia, SC

For more information about federal forfeiture conferences, please contact Nancy Martindale, AFMLS, Criminal Division, at (202) 514-1263.

Treasury Trends

By Charles Ott, Special Projects Officer, Executive Office for Asset Forfeiture, Department of the Treasury

Treasury Auctions Historic Virginia Property

It's very likely that George Washington did, indeed, sleep here. Close by Fredericksburg and the Rappahannock River, halfway between Richmond and Washington, Berclair Plantation dates from before the Revolutionary War when it was first built by George's brother-in-law, Lewis Fielding. In 1773, George's youngest brother, Charles, and his wife, Mildred, lived there. Some two hundred and twenty-five years later, on September 23, 1998, the house, various outbuildings, and a horse barn, all sitting on over 56 acres of land, were sold at auction, the end result of an Internal Revenue Service, Criminal Investigation Division, forfeiture case.

Today, Berclair is within a stone's throw of the heavily trafficked Interstate 95, and during its long history it has been caught up in events swirling along that north-south corridor. From 1839 to 1884, the estate belonged to a wealthy local farmer, Benjamin Temple. In the late fall of 1862, as Generals Ambrose Burnside and Robert E. Lee jockeyed for advantage between the capitols of the Union and the Confederacy, the diarist, Jane Beale, recorded seeking refuge at Berclair as federal forces first threatened and then bombarded the City of Fredericksburg. The property itself quartered Confederate troops for a time. After the war, Temple's son, Major Bernard Moore Temple, went on to become chief engineer for the Santa Fe Railroad. In 1907, relatives of two other American Presidents, William Henry Harrison and Benjamin Harrison, took ownership of Berclair.

The property was forfeited following a tobacco fraud investigation of a multistate conspiracy in which thousands of pounds of tobacco raised in excess of amounts allowed by federal agricultural quotas were bought from growers and sold illegally on the open market. Businessman Mark Corrigan purchased Berclair as a horse farm in 1991 with the profits derived from the fraud. Corrigan is currently serving a 15-year sentence for his role in the criminal enterprise.

The property was sold in three lots and went to one buyer who paid a total of just under $900,000. In addition to the three bedroom, two and a half bath main house, Berclair included: a guest quarters; a caretaker's home (formerly a smokehouse); a greenhouse; a newly-renovated horse barn; and work and equipment sheds. Over two thousand boxwoods of English, French, and American species enhanced the grounds of the estate.